

Written Notice of Proposed Action Template For Agricultural Civil Penalty Actions

Opening and Right to Review Evidence

County Letterhead

Date:

*Information in
italics is
intended to
advise the notice
preparer – it
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verbatim in the
final version of
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FILE NO. *(County abbreviation, fiscal year, case number)*

NOTICE OF PROPOSED ACTION, NATURE OF VIOLATION, AND RIGHT TO REQUEST HEARING

TO: Respondent Name *(business or individual – one entity per notice)*
License Number *(if applicable)*
Attn: *(individual's name if first line is a business)*
Address
City, State, Zip Code

You are hereby notified that the Agricultural Commissioner for the County of _____ proposes that you be fined the amount of \$_____ *(summary of the total fine for this action)* as a civil penalty for violating California's pesticide law(s) as explained below. The authority for this action is granted to the County Agricultural Commissioner pursuant to the provisions of section 12999.5 of the Food and Agricultural Code (FAC) *(and/or 12997.5 – whichever is most appropriate for the action)*. *You should note additional sections ONLY if they specifically apply to the case.* The amount of this fine was determined by applying the circumstances of the violation to the fine regulations adopted for use in these actions. These regulations are found in Title 3, California Code of Regulations (3 CCR), section 6130, a copy of which is enclosed with this Notice of Proposed Action.

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Written Notice of Proposed Action Template For Agricultural Civil Penalty Actions, Continued

**Factual
Circumstances
of Violation(s);
Enclosures**

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FACTUAL CIRCUMSTANCES OF VIOLATION(S)

You are charged with violating California's pesticide laws and regulations as cited below. A brief description of the nature of each violation, the facts of each violation, and an explanation of how the fine level was determined follows:

Violation 1 and Fine Explanation

Violation 2 and Fine Explanation (*if applicable*)

Additional Violations and Fine Explanations (*if applicable*)

Penalty Summary

The Commissioner proposes to fine you a total of \$ ____ (*amount*) ____ for the ____ (*quantity of violations/counts*) ____ described above.

ENCLOSURE(S)

List the enclosures of code text:

A copy of the text of 3 CCR, section 6130, and/or FAC section _____ and/or 3 CCR section(s) _____ is enclosed for your convenience, (*again, enclose only those which apply to this case*).

The most likely code sections you will need to provide are the specific violation codes, 3 CCR section 6130, FAC section 12999.5. If you charge multiple counts, you should also reference FAC sections 12996.5 and/or 12997.5.

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Written Notice of Proposed Action Template For Agricultural Civil Penalty Actions, Continued

Right to Review Evidence Before the Hearing

*Consider making
this a separate
page within the
NOPA.*

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You May Review the Evidence Against You

You are entitled to review the Commissioner's evidence supporting these charges during regular business hours at the office of the _____ County Agricultural Commissioner, located at _____ in _____, California. We will provide one copy of the case file available to you free of charge. We may charge you reasonable costs for additional copies.

Although not required by the statute, it is a good idea to have a separate copy of the case file available for respondents to review before the hearing so they have a chance to prepare. This practice is both fair and helpful to ensure due process. In any case, if respondents request to see the evidence before the hearing, you must allow them to do so at a reasonable time during regular business hours.

A few words to Commissioners about how the Public Records Act may apply to the NOPA or the case file. . . .

You do not have to provide a free copy of the case file to the respondent. However, if you do charge for the file, the "per page" copying fee should not exceed those that you would normally charge any other person seeking copies of other public records. For example, DPR charges 25 cents per page for copies of documents released pursuant to Public Records Act requests because that is the Department's cost to copy documents on their photocopiers. Pursuant to the statute, staff time to review, retrieve, or prepare the document(s) cannot be charged for Public Records Act requests.

It is DPR's opinion that a NOPA is not a pre-decisional document or protected document under the Public Records Act. The Commissioner acts as an official representative of the people of her or his county. When a Commissioner issues a NOPA, it has the same effect as filing a complaint against the respondent at the county courthouse.

Consult your county counsel if you need advice specific to your county on this matter. For further information about the Public Records Act, you may consult Government Code, section 6250, et seq.

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Written Notice of Proposed Action Template For Agricultural Civil Penalty Actions, Continued

General Rights and “Stipulation and Waiver to Order”

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*“How to
Request a
Hearing –
Failure to
Request”
presumes you
will use the
enclosed
Hearing Request
Form. If you do
not use it, you
may have to
change the
“How to
Request a
Hearing –
Failure to
Request”
section.*

You May Request a Hearing and Present Evidence at the Hearing

You may request a hearing to review the Commissioner’s evidence, and to present any evidence, oral or written, on your behalf as to why the Commissioner should not take the proposed action. You are not required to be represented by legal counsel at the hearing. Your attorney may accompany you and represent you if you wish. You will be provided a written decision of the Commissioner’s finding. Although not required by the authorizing statute, a tape-recording will be made of the hearing proceedings.

How to Request a Hearing - Failure to Request – FAC section 12999.5

A hearing in this matter will be scheduled and held at the office of the County Agricultural Commissioner, located at the above noted address, if you request a hearing by signing, dating, and returning the enclosed Hearing Request (*or a hearing request letter*) within 20 days of receipt of this Notice of Proposed Action. Failure to timely request a hearing is a waiver of the right to a hearing. The Commissioner may take the action proposed in this notice without a hearing. Further, failure to request a hearing is a waiver of your right to appeal the Commissioner’s decision (see *Appeal After Hearing*).

Stipulation and Waiver to Order – FAC section 12999.5

If you do not wish to request a hearing to contest the charges and proposed action, you may stipulate (agree) to the enclosed Order by dating, signing, and returning the enclosed Stipulation and Waiver to Order within 20 days of receipt of this notice.

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Written Notice of Proposed Action Template For Agricultural Civil Penalty Actions, Continued

Appeal Rights After Hearing

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Appeal Rights After Hearing – FAC section 12999.5

Should you disagree with the Commissioner's decision, you may request an appeal to the Director of DPR within 30 days of receiving the Commissioner's decision and order. However, you waive these appeal rights if you do not request and attend the hearing at the scheduled time and date, or if you fail to request an appeal within the 30-day time frame.

The request for appeal must be mailed to the Director of the Department of Pesticide Regulation, 1001 I Street, P.O. Box 4015, Sacramento, California 95812-4015.

The request for appeal:

1. Must be signed by you or your authorized agent; and
2. Must state the grounds for the appeal; and
3. Must include a copy of the Commissioner's Decision and Order; and
4. Must be filed or mailed to the Commissioner at the same time you mail it to the Director.

Failure to follow any of the above requirements may affect your right to appeal.

If the Director grants an appeal, you will receive the Director's written decision approximately 45 days after receipt of your appeal, or as soon thereafter as practical.

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Written Notice of Proposed Action Template For Agricultural Civil Penalty Actions, Continued

**Incorporate
Pesticide
Incident
Reimbursement
Notice;
Timely
Reimbursement
– Penalty Offset
and Proof
Notice; and
Schools Notice,
if applicable**

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The following three notices may or may not apply to the circumstances of the NOPA – use only those notices (more than one is possible) that apply to the particular situation:

Pesticide Incident Reimbursement Notice - FAC section 12997.5

Any person who is found in violation of pesticide laws and regulations that resulted in illness or injury requiring emergency medical transport or emergency medical treatment of any individual, in a non-occupational setting, from a pesticide used in the production of an agricultural commodity shall be liable to the individual harmed or to the medical provider for the immediate costs of uncompensated medical care from acute injuries and illnesses of the exposed individual.

Timely Reimbursement - Penalty Offset and Proof Notice – FAC sections 12996.5 and 12997.5

If you offer to reimburse, or have already reimbursed, the immediate medical costs for acute medical illnesses and injury, the Commissioner may reduce the proposed administrative civil penalty by an amount up to fifty percent. You must request a hearing and provide proof at the hearing of immediate reimbursement in order for the Commissioner to consider reducing the penalty.

Schools Notice – FAC section 12999.5(b)

If you receive a civil penalty for pesticide drift in a school area subject to FAC section 11503.5 that results in a serious (Class A) violation as defined in 3 CCR section 6130, the Commissioner shall charge a fee, not to exceed fifty dollars (\$50), for processing and monitoring each subsequent pesticide application that may pose a risk of drift, until you have completed 24 months without another serious violation (as defined by 3 CCR section 6130).

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Written Notice of Proposed Action Template For Agricultural Civil Penalty Actions, Continued

Order -
Stipulation and
Waiver to
Order (form)

County Letterhead

ORDER

FILE NO. (County abbreviation, fiscal year, case number)

*Consider making
this a separate
page within the
NOPA.*

TO: (Respondent Name)
(Address)

ORDER: It is hereby ordered (*name*) is fined (*total amount of fine for this action*). The fine is due now and payable.

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Commissioner Signature
Commissioner's Official Title
Address

Instructions to Respondent:

If you wish to pay the fine and not request (waive) a hearing, you may sign the Stipulation and Waiver to Order below. By doing so, you also waive your right to an appeal or any other review in this matter. If you wish to sign the Stipulation and Waiver to Order, you must submit it to the Agricultural Commissioner within 20 days of receipt of this notice.

STIPULATION AND WAIVER TO ORDER

I hereby stipulate that the Agricultural Commissioner's Notice of Proposed Action in the above-entitled matter states grounds for civil penalty action based on the evidence now before the Commissioner.

Without admitting to the violations alleged in the Notice of Proposed Action, I stipulate to the Commissioner's Order, as set forth above, and I waive all rights to a hearing and appeal or any other review in this matter.

Respondent's Signature

Date: _____

Make the check payable to: _____ Mail the check and the
signed **Stipulation and Waiver to Order** to:
Department Name or Commissioner's Office
Address

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Written Notice of Proposed Action Template For Agricultural Civil Penalty Actions, Continued

Hearing Request (form)

County Letterhead

HEARING REQUEST

Consider making this a separate page within the NOPA.

ACKNOWLEDGMENT OF RECEIPT OF PROPOSED NOTICE OF ACTION AND REQUEST FOR HEARING

FILE NO. (County abbreviation, fiscal year, case number)

The Hearing Request form is an optional form. You do not have to include it as a separate form within the NOPA, as long as you have incorporated all of the information from "How to Request a Hearing" into another part of the NOPA.

Important: The Hearing Request must be submitted to the Agricultural Commissioner within 20 days of receipt of the Notice of Proposed Action.

TO: (Respondent's Name)
(Address)

I, the undersigned respondent in this proceeding, hereby acknowledge receipt of a copy of the Notice of Proposed Action.

I hereby request a hearing to permit me to have an opportunity to present my defense to the violations contained in the Notice of Proposed Action.

Respondent's Signature

Date: _____

Respondent's Name (printed)

Telephone: (____) _____

Mail this form to:

Commissioner's Official Title
Department Name
Address

Information in italics is intended to advise the notice preparer – it should not be included verbatim in the final version of the NOPA.

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Written Notice of Proposed Action Template For Agricultural Civil Penalty Actions, Continued

Closing

If you have any questions regarding this matter, please contact _____
at () _____. *This person should not be the Hearing Officer.*

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*Commissioner Signature
Commissioner's Official Title
Address
Telephone Number*

End